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0594-00055

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18 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

19 REGION 9

20 In the matter of: )

21 WESTINGHOUSE ELECTRIC CORPORATION, )

U.S. EPA Docket No.  
88-20

22 Respondent )

23 Proceeding Under Sections 104, 106, )

24 and 122 of the Comprehensive )

25 Environmental Response, Comp- )

26 ensation, and Liability Act of 1980. )

27 (42 U.S.C. §§9604, 9606, and 9622), )

28 as amended by the Superfund )

29 Amendments and Reauthorization )

30 Act of 1986, and Section 9003(h) of )

31 the Solid Waste Disposal Act )

32 (42 U.S.C. §6991b(h)) as amended by )

33 the Superfund Amendments and )

34 Reauthorization Act of 1986. )

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37 ADMINISTRATIVE CONSENT ORDER

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1 construed to be an admission of any issue of fact or law by  
2 Westinghouse.

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4 II. STATEMENT OF PURPOSE

5 In entering into this Consent Order, the common objectives of  
6 EPA and Westinghouse are:

7 A. To conduct the Remedial Investigation ("RI") described  
8 in the Remedial Investigation and Feasibility Study Work Plan  
9 ("RI/FS Work Plan"), a copy of which is attached as Attachment 1,  
10 and by this reference made a part of this Consent Order, in order  
11 to complete the determination begun by Westinghouse of the nature  
12 and extent of any threat to the public health or welfare or the  
13 environment caused by the release or threatened release of haz-  
14 ardous substances, pollutants, or contaminants at or from the  
15 Westinghouse Sunnyvale facility ("the Site," as defined in Sec-  
16 tion III.A below), to the degree necessary to assess further  
17 remedial actions, and to evaluate alternatives for any further  
18 remedial action to prevent, mitigate or otherwise respond to or  
19 remedy the release or threatened release of hazardous substances,  
20 pollutants, or contaminants at or from the Site. The RI/FS Work  
21 Plan specifies work to be performed during the Remedial Inves-  
22 tigation, including a list of reports, documents, and other  
23 deliverables that Westinghouse will provide for EPA review, com-  
24 ment or approval.

25 B. To conduct the Feasibility Study ("FS") described in the  
26 RI/FS Work Plan for evaluating remedial action alternatives to  
27 prevent and eliminate the release or threatened release of

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1 hazardous substances, pollutants, or contaminants at or from  
2 the Site.

3 C. To undertake all actions required by the terms and con-  
4 ditions of this Consent Order in a cost-effective manner in ac-  
5 cordance with CERCLA, the National Contingency Plan, 40 C.F.R.  
6 Part 300.61 et seq., as amended, and, where applicable, the EPA  
7 Response Program for Petroleum, Section 9003(h) of RCRA, 42  
8 U.S.C. § 6991b(h) and the corrective action regulations promul-  
9 gated pursuant to Section 9003(a) of RCRA, 42 U.S.C. § 6991b(a).

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### III. STATEMENT OF FACTS

12 A. The Westinghouse Electric Corporation is headquartered  
13 in Pittsburgh, Pennsylvania. The Marine Division Sunnyvale Plant  
14 currently manufactures steam generators, marine propulsion sys-  
15 tems, and missile launching systems for the U.S. Department of  
16 Defense. The plant is located at 401 E. Hendy Avenue in the City  
17 of Sunnyvale, Santa Clara County, California. The Site is  
18 situated on 75 acres of industrially developed land adjacent to  
19 nearby residential areas. It is bounded by California Avenue to  
20 the north, Hendy Avenue to the south, North Sunnyvale Avenue to  
21 the west and North Fair Oaks Avenue to the east.

22 B. Westinghouse acquired the original plant property in  
23 1947 and continued expanding this property until 1956. Westing-  
24 house products initially manufactured at the Sunnyvale Plant in-  
25 cluded circuit breakers and transformers. In 1964, the Marine  
26 Division was established at Sunnyvale. It assumed exclusive

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1 responsibility for designing, manufacturing, testing and servic-  
2 ing marine products.

3 C. During the mid-1950s, Westinghouse manufactured trans-  
4 formers containing Inerteen as a thermal insulating fluid on a  
5 portion of the Site. Inerteen, Westinghouse's brand of askarel,  
6 consists of polychlorinated biphenyls (PCBs) and trichloroben-  
7 zenes (TCBs). An above-ground Inerteen storage tank was used to  
8 supply the manufacturing operations.

9 D. In 1981 Westinghouse conducted a study to determine the  
10 nature and extent of PCBs in the soils on-Site. Westinghouse in-  
11 itiated this investigation due to the general public concern  
12 being expressed regarding PCB problems. It was discovered that  
13 contamination of shallow soils and soils associated with  
14 groundwater aquifers had occurred on-Site. Soil contamination  
15 consisted mainly of PCBs in soils located along the fenceline  
16 surrounding the perimeter of the Sunnyvale facility, in residen-  
17 tial backyards adjoining the western fenceline, in storage yard  
18 areas on the northern side of the facility, in the northeast cor-  
19 ner of the site, and in the former Inerteen storage area in the  
20 southeast corner of the Site near Reservoir 2. Groundwater con-  
21 tamination was shown to consist primarily of PCBs and TCBs under  
22 the former Inerteen storage area, and hydrocarbon related con-  
23 tamination in the area of a former underground fuel storage tank.

24 E. In November 1984, pursuant to California Regional Water  
25 Quality Control Board (RWQCB) Order No. 84-63, Westinghouse com-  
26 pleted cleanup of shallow soils along the perimeter fenceline and  
27 in adjacent residential backyards. Then in September 1985, West-

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1 inghouse completed cleanup of shallow soils in the northern  
2 storage yard areas, except for a small area in the northwest yard  
3 area.

4 F. Addition of the Westinghouse Sunnyvale facility to the  
5 Federal "Superfund" National Priorities List was proposed in Oc-  
6 tober 1984 and finalized in July 1986. The California RWQCB was  
7 the lead agency involved in decision-making at the site. On  
8 December 18, 1987, the EPA received an official request from the  
9 California RWQCB to assume the lead role in overseeing remedial  
10 studies and cleanup activities at the Site.

11 G. The hazardous substances, pollutants, or contaminants  
12 which have been detected in soil and groundwater at the Site in-  
13 clude: PCBs, chlorobenzenes, such as dichlorobenzene (DCB) and  
14 trichlorobenzene (TCB), volatile organics (benzene, toluene,  
15 xylene, ethylbenzene), and total hydrocarbons.

16 H. The population at risk from the contaminants at the  
17 Site include residents in neighborhoods bordering the Site and  
18 the users of two wells located downgradient of the Site. Resi-  
19 dents would be receptors if they used contaminated surface or  
20 groundwater coming from the Site. Two wells have been identified  
21 as potential receptors: (1) a domestic and irrigation well lo-  
22 cated downgradient about 6,860 ft to the northeast of Reservoir  
23 2, and; (2) a municipal well located downgradient about 2,900 ft  
24 northwest of the Site.

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#### IV. CONCLUSIONS OF LAW

27 A. The Site is a "facility" as defined in Section 101(9) of

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1 CERCLA, 42 U.S.C. § 9601(9), and formerly contained an  
2 "underground storage tank" as defined in Section 9001(1) of RCRA,  
3 42 U.S.C. § 6991(1).

4 B. Westinghouse is a "person" as defined in Section 101(21)  
5 of CERCLA, 42 U.S.C. § 9601(21), and is an "owner" as defined in  
6 Section 9001(3) of RCRA, 42 U.S.C. § 6991(3).

7 C. The chemicals and their constituents at the Site are, in  
8 part, "hazardous substances" as defined in Section 101(14) of  
9 CERCLA, 42 U.S.C. § 9601(14), and, in part, "petroleum" as  
10 defined in Section 9001(8) of RCRA, 42 U.S.C. § 6991(8).

11 D. The past, present, and potential migration of hazardous  
12 substances from the Site constitutes an actual or threatened  
13 "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. §  
14 9601(22). The leaking of petroleum from the underground storage  
15 tank constitutes a "release" as defined in Section 9001(5) of  
16 RCRA, 42 U.S.C. § 6991(5).

17 E. Westinghouse is a potentially responsible party pursuant  
18 to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

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#### V. DETERMINATIONS

21 Based on the Statement of Facts and the Conclusions of Law  
22 set out above, EPA has determined that:

23 A. The actual or threatened release of hazardous substances  
24 from the Site may present an imminent and substantial endanger-  
25 ment to the public health or welfare or the environment.

26 B. The actions required pursuant to CERCLA by this Consent  
27 Order are necessary to protect the public health, welfare and the

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1 environment.

2 C. The corrective action required pursuant to RCRA by this  
3 Consent Order may be necessary to protect human health and the  
4 environment.

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#### VI. WORK TO BE PERFORMED

7 All response work performed pursuant to this Consent Order  
8 shall be under the direction and supervision of qualified person-  
9 nel. Prior to initiation of site work, Westinghouse shall notify  
10 EPA in writing of the name, title, and qualifications of such  
11 personnel and of any contractors or subcontractors to be used in  
12 carrying out the terms of this Consent Order.

13 It is hereby AGREED TO AND ORDERED that the following work  
14 shall be performed by Westinghouse:

15 A. Westinghouse shall perform the tasks and submit reports  
16 according to the schedule contained in the RI/FS Work Plan  
17 (Attachment 1). EPA will perform the Public Health Evaluation  
18 (PHE) portion of the FS pursuant to EPA Guidance. EPA will coor-  
19 dinate with Westinghouse to integrate the PHE into the FS.  
20 Deliverables to be submitted by Westinghouse are listed below.  
21 This list includes the type of review that EPA will conduct  
22 (either "Review and Comment" or "Review and Approve"). Each  
23 deliverable shall include the items described in the RI/FS Work  
24 Plan. Open discussions between Westinghouse and EPA will be  
25 necessary to assure that deliverables contain sufficient detail.  
26 Any reports, plans, specifications, schedules, and attachments  
27 required by this Consent Order are, upon approval by EPA, incor-

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porated into this Consent Order. Any noncompliance with such EPA-approved reports, plans, specifications, schedules, and attachments shall be considered a failure to achieve the requirements of this Consent Order and will subject Westinghouse to stipulated penalties in accordance with Section XIII of this Consent Order.

**Deliverables:**

(a) Health and Safety Plan - Review and Approve

(b) Sampling and Analysis Plan - Draft: Review and Comment

Final: Review and Approve

(c) Site Evaluation Technical Memorandum

- Review and Comment

(d) Monitoring Well Installation Report - Review & Comment

(e) Monthly Progress Reports - Review and Comment

(f) Aquifer Test Report - Review and Comment

(g) Feasibility Testing Proposal(s) and Report(s)

(Draft(s)) - Review and Comment

(Final(s)) - Review and Approve

(h) Remedial Investigation Report

(Draft) - Review and Comment

(Final) - Review and Approve

(i) Remedial Alternative Development - Initial Screening

Results Technical Memorandum - Review and Comment

(j) Detailed Analysis of Acceptable Remedial Alternatives

Technical Memorandum - Review and Comment

(k) Feasibility Study Report (Draft) - Review and Comment

(Final) - Review and Approve

1 This work shall be consistent with all applicable requirements of  
2 CERCLA and the National Contingency Plan and shall be conducted  
3 in accordance with all EPA RI/FS guidance (including the draft  
4 RI/FS guidance dated March 1988, or its subsequent version) and  
5 with the standards, specifications, and schedule contained in the  
6 approved RI/FS Work Plan. Where applicable, the work shall be  
7 consistent with the petroleum release correction regulations  
8 promulgated pursuant to Section 9003(a) of RCRA. Should revisions  
9 of the draft RI/FS guidance, or the promulgation of  
10 petroleum release correction regulations, require a material  
11 change to the work conducted pursuant to this Consent Order, Westinghouse  
12 may request an extension of the schedule for performance.  
13 Upon such request, EPA shall grant a reasonable extension  
14 of time to the extent necessary to accommodate the changed work  
15 requirements.

16 B. EPA shall, as indicated above, review, comment, and approve or disapprove each report, document or other deliverable.  
17 Within the time period scheduled for review of Westinghouse submittals,  
18 EPA shall notify Westinghouse in writing of EPA's approval, disapproval or if additional review time is required. In  
19 the event of any disapproval, EPA shall specify the reasons for  
20 such disapproval and recommended modifications regarding the disapproval.  
21

22 1. Within 30 days, or more if needed, of receipt of Westinghouse submittals pursuant to Sections VI.A(b), Sampling and  
23 Analysis Plan, and (g), Feasibility Testing Proposal, EPA shall  
24 submit to Westinghouse its comments. Westinghouse shall submit  
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1 its final deliverable incorporating EPA's comments within 30 days  
2 of receiving EPA's comments.

3 2. Within 45 days, or more if needed, of receipt of  
4 Westinghouse submittals pursuant to Sections VI.A(h), Remedial  
5 Investigation Report, and (k), Feasibility Study Report, EPA  
6 shall submit to Westinghouse its comments. Westinghouse shall  
7 submit its final deliverables incorporating EPA's comments within  
8 30 days of receiving EPA's comments.

9 3. A fifteen (15) day period for the purpose of holding  
10 technical meetings between the EPA and Westinghouse shall be  
11 available beginning with the day after Westinghouse receives EPA  
12 comments or modifications with respect to the above-referenced  
13 deliverables submitted pursuant to Section VI.A (b), (g), (h),  
14 and (k). The technical meetings shall be held for the purpose of  
15 fostering discussion on technical matters that may arise during  
16 the conduct of the work and resolving differences of opinion be-  
17 tween the parties to this Consent Order. To the maximum extent  
18 possible, these meetings shall be used to avoid dispute resolu-  
19 tion procedures under Section XII.

20 4. The deadlines for submission of revised Westinghouse  
21 documents shall be extended for an amount equal to any extra time  
22 needed by EPA beyond the time specified above to review and com-  
23 ment on the draft deliverables referenced in Section VI.B.1 & 2.

24 C. EPA may determine that additional tasks, including  
25 remedial investigatory work, engineering evaluation, and interim  
26 response measures are necessary as part of the RI/FS. In that  
27 case, the RI/FS Work Plan shall be amended accordingly. West-  
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1     inghouse agrees to implement any additional tasks which EPA  
2     determines are necessary as part of the RI/FS or for the Public  
3     Health Evaluation and are consistent with the National Contin-  
4     gency Plan. Upon prior written notice from th EPA, the addi-  
5     tional work shall be completed by Westinghouse in accordance with  
6     the standards, specifications, requirements, and schedule deter-  
7     mined or approved by EPA.

8             D. Documents, including progress and technical reports, ap-  
9     provals, disapprovals, and other correspondence to be submitted  
10    pursuant to this Consent Order, shall be sent to the following  
11    addressees or to such other addresses as the parties hereafter  
12    may designate in writing, and shall be deemed submitted on the  
13    date received by EPA or Westinghouse.

14            1) Six (6) copies of the Remedial Investigation Report  
15    (draft and final) and the Feasibility Study Report (draft and  
16    final) and four (4) copies of all other documents to be submitted  
17    to EPA shall be sent to:

18                   Helen McKinley  
19                   Remedial Project Manager (T-4-5)  
20                   Toxics & Waste Management Division  
21                   US EPA, Region 9  
22                   215 Fremont Street  
23                   San Francisco, CA 94105  
24                   (415) 974-7231

25            2) Documents submitted to Westinghouse shall be sent to:

26                   Paul P. Jack  
27                   Manager, Environmental Remediation  
28                   Westinghouse Electric Corporation  
29                   Westinghouse Building  
30                   Gateway Center  
31                   11 Stanwix Street  
32                   Pittsburgh, PA 15222  
33                   (412) 642-3192

1                                    VII. DESIGNATED PROJECT COORDINATORS

2            A. EPA hereby designates the following person as Project  
3 Coordinator who shall have the authorities, duties, and respon-  
4 sibilities vested in the Remedial Project Manager by the National  
5 Contingency Plan:

6                                    Helen McKinley  
7                                    Remedial Project Manager (T-4-5)  
8                                    Toxics & Waste Management Division  
9                                    US EPA, Region 9  
                                  215 Fremont Street  
                                  San Francisco, CA 94105  
                                  (415) 974-7231

10           Westinghouse hereby designates the following person as its  
11 Project Coordinator who shall be responsible for overseeing the  
12 implementation of this Consent Order:

13                                    Paul P. Jack  
14                                    Manager, Environmental Remediation  
15                                    Westinghouse Electric Corporation  
16                                    Westinghouse Building  
17                                    Gateway Center  
                                  11 Stanwix Street  
                                  Pittsburgh, PA 15222  
                                  (412) 642-3192

18           The EPA Project Coordinator will be EPA's designated representa-  
19 tive at the Site. To the maximum extent possible, all oral com-  
20 munications between Westinghouse and EPA concerning the ac-  
21 tivities performed pursuant to this Order shall be directed  
22 through the Project Coordinators. All documents, including  
23 progress and technical reports, approvals, and other correspon-  
24 dence concerning the activities performed pursuant to the terms  
25 and conditions of this Consent Order, shall be delivered in ac-  
26 cordance with Section VI.D, above.

27           B. EPA and Westinghouse each have the right to change their  
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1    respective Project Coordinators. Such a change shall be ac-  
2    complished by notifying the other party in writing at least one  
3    week prior to the change.

4            C. Consistent with the provisions of this Consent Order,  
5    the EPA Project Coordinator shall also have the authority vested  
6    in the On-Scene-Coordinator ("OSC") by the National Contingency  
7    Plan, unless EPA designates a separate individual as OSC, who  
8    shall then have such authority.

9            D. The absence of the EPA Project Coordinator or OSC from  
10   the Site shall not be cause for the stoppage of work.

#### 11 12                            VIII. QUALITY ASSURANCE

13            Westinghouse shall use quality assurance, quality control,  
14   and chain of custody procedures in accordance with the Quality  
15   Assurance Project Plan (QAPP) approved by EPA as part of the  
16   RI/FS Work Plan. Westinghouse shall follow the QAPP throughout  
17   all sample collection and analysis activities.

#### 18 19                            IX. SITE ACCESS

20            A. To the extent that Westinghouse requires access to land  
21   other than land it owns, Westinghouse will use its best efforts  
22   to obtain access agreements for itself, its contractors and  
23   agents, EPA, and its contractors and agents, from the present  
24   owners or lessees as the need for such access may arise. In the  
25   event that Westinghouse is not able to obtain site access to  
26   property owned or controlled by persons or entities other than  
27   Westinghouse, Westinghouse shall notify EPA promptly regarding  
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1 both the lack of, and efforts to obtain, such access.

2 B. Westinghouse shall not be required to pay any property  
3 owner an unreasonable fee to obtain access.

4 C. No conveyance of title, easement, or other interest in  
5 the property comprising the Site shall be consummated without a  
6 provision permitting the continuous implementation of the provi-  
7 sions of this Consent Order.

8 D. Westinghouse shall permit EPA, or its authorized repre-  
9 sentatives, to have reasonable access at all times to the Site to  
10 monitor any activity conducted pursuant to the RI/FS Work Plan or  
11 conduct such tests or investigations as EPA deems necessary pur-  
12 suant to the National Contingency Plan or CERCLA.

13  
14 X. SAMPLING AND DATA/DOCUMENT AVAILABILITY

15 A. Upon request, Westinghouse shall provide EPA with the  
16 results and QA/QC documentation of all sampling and tests or  
17 other technical data generated by Westinghouse or on  
18 Westinghouse's behalf with regard to soil, ground water, surface  
19 water, or air contamination by hazardous substances, pollutants,  
20 or contamination at the Site. Results of all sampling and  
21 analysis data collection completed during the previous month  
22 shall be presented in a monthly report.

23 B. At the request of EPA, Westinghouse shall provide split  
24 or duplicate samples to EPA or its authorized representatives of  
25 any samples collected by Westinghouse as part of the RI/FS Work  
26 Plan. Westinghouse shall notify EPA of any planned sample col-  
27 lection activity in the preceding monthly report.

1 C. At the request of Westinghouse, EPA shall provide all of  
2 its technical documents regarding the Site to Westinghouse, un-  
3 less such documents are exempt from disclosure pursuant to 40  
4 C.F.R. 2.118.

5 D. Westinghouse shall permit EPA, or its authorized repre-  
6 sentatives, to the extent authorized by Section 104(e) of CERCLA  
7 and Section 9005(a) of RCRA, to inspect and copy all records,  
8 documents, and other writings, including all sampling and  
9 monitoring data, that in any way concern soil, ground water, sur-  
10 face water or air contamination at the Site.

11 E. Westinghouse may assert a confidentiality claim, cover-  
12 ing part or all of the information requested by this Consent Or-  
13 der pursuant to 40 C.F.R. § 2.203(b). Analytical data shall not  
14 be claimed as confidential by Westinghouse. Information deter-  
15 mined to be confidential by EPA will be afforded the protection  
16 specified in 40 C.F.R. Part 2, Subpart B. If no such claim ac-  
17 companies the information when it is submitted to EPA, it may be  
18 made available to the public by EPA without further notice to  
19 Westinghouse.

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#### XI. RECORD PRESERVATION

22 Westinghouse agrees to preserve during the pendency of this  
23 Consent Order and for a minimum of six (6) years after termina-  
24 tion of this Consent Order a depository of all of the records and  
25 documents required to be prepared under the RI/FS Work Plan. If  
26 EPA requests that some or all such documents be preserved for a  
27 longer period of time, Westinghouse shall either comply with that

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1 request or permit EPA to obtain a copy any such document prior to  
2 its destruction.

3 XII. DISPUTE RESOLUTION

4 A. If Westinghouse wishes to raise a good faith objection to  
5 any EPA disapproval, determination, or other decision made pur-  
6 suant to this Consent Order, Westinghouse shall notify EPA in  
7 writing within fourteen (14) calendar days of receipt of the  
8 decision. EPA and Westinghouse shall then have an additional  
9 fourteen (14) days from the date of the receipt by EPA of the  
10 notification of Westinghouse's objection to reach agreement. If  
11 agreement cannot be reached on the disputed issue within this  
12 fourteen (14) day period, EPA shall provide a written statement  
13 of its decision, considered and signed by the Assistant Director  
14 for Superfund, Toxics and Waste Management Division, Region 9, to  
15 Westinghouse. Westinghouse shall then implement the directives  
16 contained in EPA's decision.

17 B. It is the intent of the parties that, to the maximum ex-  
18 tent possible, disagreements regarding work to be performed be  
19 resolved in technical meetings, as set forth in Section VI.B.3,  
20 before this formal dispute resolution provision is invoked.

21 C. The imposition or amount of stipulated penalties is not  
22 subject to dispute resolution.

23 D. The dispute resolution provision or EPA's decisions pur-  
24 suant to this provision do not grant or imply jurisdiction to any  
25 court to review EPA's decisions made pursuant to this Consent Or-  
26 der.

27 E. Use of the dispute resolution provision will not relieve  
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1 Westinghouse's duty to complete the tasks required pursuant to  
2 this Consent Order in a timely manner in accordance with the  
3 schedule, except as provided in Section XIII.G (Stipulated  
4 Penalties).

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### XIII. STIPULATED PENALTIES

7 A. Except with respect to any extensions allowed by EPA in  
8 writing, or excused by the provisions of Section XIV (Force  
9 Majeure), for each day that Westinghouse fails to submit a report  
10 or document, or in which Westinghouse otherwise fails to  
11 achieve the requirements of this Order, Westinghouse agrees to  
12 pay the sums assessed in accordance with the schedules set forth  
13 below as stipulated penalties.

14 B. For the purposes of this Consent Order, Class I noncom-  
15 pliance with the terms of this Consent Order is defined as the  
16 failure to submit the following documents:

- 17 1. Remedial Investigation Report (Final)  
18 2. Feasibility Study Report (Final)

19 C. For the purposes of this Consent Order, Class II noncom-  
20 pliance includes the following:

21 1. Failure to submit the following documents:

- 22 - Health and Safety Plan  
23 - Sampling and Analysis Plan (Draft & Final)  
24 - Site Evaluation Technical Memorandum  
25 - Monitoring Well Installation Report  
26 - Aquifer Test Report

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- Feasibility Testing Proposal(s) and Report(s)  
(Draft & Final)
- Remedial Investigation Report (Draft)
- Remedial Alternative Development - Initial  
Screening Results Technical Memorandum
- Detailed Analysis of Acceptable Remedial Alternatives Technical Memorandum
- Feasibility Study Report (Draft);

- 2. Failure to perform work agreed to in the RI/FS Workplan, or additional work required pursuant to Section VI.C (Work to Be Performed);
- 3. Performance of unauthorized remedial work in violation of Section 122(e)(6) of CERCLA; and
- 4. Failure to otherwise comply with the requirements of this Consent Order.

D. For the purposes of this Consent Order, Class III non-compliance includes the failure to submit Monthly Progress Reports, or data in accordance with Section X (Sampling and Data/Document Availability).

E. Stipulated penalties shall be calculated according to the schedules below:

Class I Noncompliance Penalty Schedule

<u>Day</u>	<u>Penalty per Day</u>
1 - 7	\$10,000
8 - 14	12,500
15 - and beyond	15,000

Class II Noncompliance Penalty Schedule

<u>Day</u>	<u>Penalty per Day</u>
1 - 7	\$ 2,500
8 - and beyond	5,000

Class III Noncompliance Penalty Schedule

<u>Day</u>	<u>Penalty per Day</u>
1 - 10	\$ 500
11 - and beyond	1,000

F. Stipulated penalties shall accrue commencing upon the failure of Westinghouse to submit to EPA a deliverable at the time specified in the RI/FS Workplan, or according to a schedule determined for additional tasks; upon receipt by Westinghouse of EPA's written determination of noncompliance with the requirements of this Consent Order, or the requirements of Section XIII.B, C & D, above, including a determination that a deliverable was not adequate; or upon the performance of unauthorized work in violation of Section 122(e)(6) of CERCLA. The EPA's written determination of noncompliance shall set forth the class of penalty assessed, and, if applicable, the deficiencies to the deliverable. These penalties shall accrue until the noncompliance is cured, or, if applicable, upon receipt by the EPA of a revised deliverable that cure the identified deficiencies in accordance with the requirements of this Consent Order.

G. Stipulated penalties shall accrue during the dispute resolution period under Section XII, except that for a maximum of

two (2) dispute resolution periods invoked over the term of this Consent Order, stipulated penalties shall not accrue. Westinghouse shall have discretion to select the dispute resolution periods for which stipulated penalties shall not apply. If Westinghouse fails to comply with EPA's written decisions pursuant to either of these two (2) dispute resolution periods, penalties shall be deemed to have accrued from the original date of the dispute. In that event, the EPA has the right to demand and collect all penalties which would otherwise have accrued prior to, during, and following the dispute period.

H. Stipulated penalties shall be payable upon demand by the Director, Toxics and Waste Management Division, U.S. EPA, Region 9, by check made payable to the United States Treasury addressed to:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 371003M  
Pittsburgh, PA 15251  
Attention: Collection Officer for Superfund

At the time the penalty is paid, copies of the transmittal letter and check shall be sent to the EPA Project Coordinator.

#### XIV. FORCE MAJEURE

A. Westinghouse shall perform all the requirements of this Consent Order according to the time limits set out in the RI/FS Work Plan (Attachment 1) unless their performance is prevented or delayed by events which constitute a force majeure. For the purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Westinghouse.

1       B. Westinghouse has the burden of proving that a delay is  
2 or will be caused by a force majeure. Increased costs associated  
3 with the implementation of actions called for by this Consent Or-  
4 der or economic hardship shall not be a force majeure.

5       C. In the event of a force majeure, the time for perfor-  
6 mance of the activity delayed by the force majeure shall be ex-  
7 tended for the time period of the delay attributable to the force  
8 majeure. The time for performance of any activity dependent on  
9 the delayed activity shall be similarly extended, except to the  
10 extent that the dependent activity can reasonably be implemented  
11 in a shorter time. EPA shall determine whether subsequent re-  
12 quirements are to be delayed and the time period granted for any  
13 delay. Westinghouse shall adopt all reasonable measures to avoid  
14 or minimize any delay caused by a force majeure. In the event of  
15 a force majeure, Westinghouse shall immediately notify EPA's  
16 Project Coordinator orally and shall, within fourteen (14) days  
17 of the oral notification, notify EPA in writing of the an-  
18 ticipated length and cause of the delay. The notification shall  
19 also state the measures taken or to be taken to prevent or mini-  
20 mize the delay, and the time table by which Westinghouse intends  
21 to implement the delayed activity. Failure of Westinghouse to  
22 comply with the force majeure notice requirements will be deemed  
23 an automatic forfeiture of its right to request a delay.

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25       XV. RESERVATION OF RIGHTS

26       A. Notwithstanding compliance with the terms of this Con-  
27 sent Order, including the completion of an EPA approved Remedial  
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1 Investigation and Feasibility Study, Westinghouse is not released  
2 from liability, if any, for any actions beyond the terms of this  
3 Consent Order taken by EPA respecting the Site. EPA reserves the  
4 right to take any enforcement action pursuant to CERCLA or any  
5 other legal authority, including the right to seek injunctive  
6 relief, monetary penalties, and punitive damages for any viola-  
7 tion of law or this Consent Order.

8 B. Westinghouse and EPA expressly reserve all rights and  
9 defenses that they may have. If EPA determines that Westinghouse  
10 has not properly performed any part of the RI/FS according to the  
11 terms of this Consent Order, EPA expressly reserves the right to  
12 undertake removal actions and/or remedial actions, including  
13 completion of the RI/FS. In the event EPA undertakes any of the  
14 above-mentioned actions, EPA reserves the right to seek reim-  
15 bursement from Westinghouse for such costs incurred by the United  
16 States. In addition, nothing contained in this Consent Order  
17 shall affect any right, claim, interest, or course of action of  
18 any party hereto with respect to third parties.

19

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XVI. NO ADMISSIONS

21 Nothing in this Consent Order is intended nor shall be con-  
22 strued to be an admission as to fact or law by Westinghouse for  
23 any purpose. The participation of Westinghouse in this Consent  
24 Order shall not be admissible against any party to this agreement  
25 in any judicial or administrative proceeding, except to enforce  
26 the terms of this Consent Order.

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1 tions to complete performance in a timely manner under this Con-  
2 sent Order.

3 C. EPA reserves the right to bring an action against West-  
4 ingshouse pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for  
5 recovery of all CERCLA response and oversight costs incurred by  
6 the United States related to this Site and not reimbursed by  
7 Westinghouse. Westinghouse shall not seek reimbursement from the  
8 Hazardous Substance Superfund under Section 106(b)(2) of CERCLA,  
9 42 U.S.C. § 9606(b)(2), for monies expended pursuant to this Con-  
10 sent Order

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12 XVIII. OTHER APPLICABLE LAWS

13 Westinghouse shall undertake all actions required by this  
14 Consent Order in accordance with the requirements of all ap-  
15 plicable local, state, and federal laws and regulations, except  
16 that, pursuant to Section 121(e) of CERCLA, no federal, state, or  
17 local permit shall be required for the portion of any removal or  
18 remedial action conducted entirely onsite, where such action is  
19 carried out in accordance with the provisions of this Consent Or-  
20 der.

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22 XIX. NON-LIABILITY OF THE UNITED STATES

23 Neither the United States Government nor any agency thereof  
24 shall be liable for any injuries or damages to persons or  
25 property resulting from acts or omissions of Westinghouse, or of  
26 its employees, agents, servants, receivers, successors, or as-  
27 signs, or of any persons, including, but not limited to firms,  
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Original  
1 corporations, subsidiaries, contractors, or consultants, in carrying out activities pursuant to this Consent Order, nor shall the United States Government or any agency thereof be held as a party to any contract entered into by Westinghouse in carrying out activities pursuant to this Consent Order.

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7 XX. COMMUNITY RELATIONS

8 EPA will implement a Community Relations Program in accordance with Agency policies and guidance documents. Westinghouse may participate in the community relations activities when deemed appropriate by EPA. Upon receipt of the final Feasibility Study Report, the EPA shall make the Report, as well as other supporting documents, available to the public for review and comment for a thirty (30) day period, or longer, pursuant to EPA's community relations policy. As a result, EPA may modify, or require Westinghouse to modify, the final Feasibility Study Report, including a Response to Comments Addendum.

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19 XXI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

20 A. The effective date of this Consent Order shall be the date on which it is signed by EPA.

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22 B. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specification, schedules, and any other writing submitted by Westinghouse will be construed or relieving Westinghouse of its obligation to obtain such formal approval as may be required by this Consent Order.



1 IT IS SO AGREED AND ORDERED:

2

3 UNITED STATES ENVIRONMENTAL  
4 PROTECTION AGENCY

5

6 By: *James K. Updegraff for*  
7 Jeff Zelikson  
8 Director,  
9 Toxics & Waste Management Division  
10 Region 9

Date. 8/24/88

11

12 WESTINGHOUSE ELECTRIC CORPORATION

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14 By: *Jack W. Frisch*  
15 Jack W. Frisch, Manager  
16 Environmental Remediation,  
17 Industrial Hygiene & Safety  
18 Environmental Affairs

Date: 8/19/88

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